

Remarks

This Amendment is in response to the Office Action dated **May 28, 2010**. Claims 1, 2, 4-14, 35-38 and 55-57 are pending in this application. The Office Action rejected claims 1, 2, 4-14, 35-38 and 55-57 under 35 USC § 103 over Bashiri (US 2003/0045923) in view of Acosta (US 7137993).

Reconsideration in view of the above amendments and the following remarks is requested.

Interview Acknowledgment

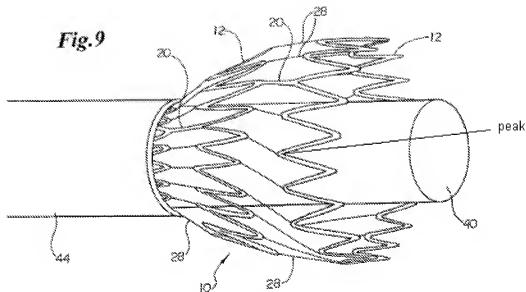
Applicants thank Examiner Tyson for the courtesies extended to Applicants' representative during the telephonic interview of August 30, 2010. During the interview, the differences between the claimed invention and the Bashiri and Acosta references were discussed. The Examiner indicated that the rejections would be withdrawn.

In particular, Applicants asserted that the applied references do not disclose or suggest the connector configuration required by independent claims 1 or 35, or the "higher corrosion potential" recited in independent claim 2.

Independent Claims 1 and 35

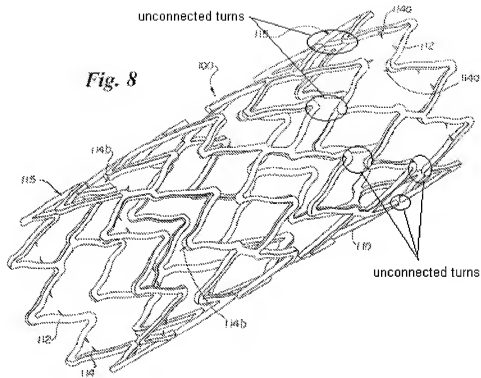
Claim 1 recites, "the first serpentine band connected to the second serpentine band by at least one permanent connector strut extending from a valley of the first serpentine band to a peak of the second serpentine band...each remaining valley of the first serpentine band connected to a peak of the second serpentine band by a disengagable connector strut."

A person of ordinary skill in the art would recognize that claim 1 requires a "closed-cell" stent design, wherein a connector spans between each peak/valley of the adjacent serpentine bands. As discussed in the application, such a configuration allows for a self-expanding stent to be ~~re-sheathed after being partially unsheathed~~. See e.g. page 28, lines 15-18, Figure 1 and Figure 9, provided below, which helps to illustrate how the claimed design allows for resheathing. Please note that if a serpentine band 12 had interior peaks (for example, the peak labeled "peak" in Figure 9 below) that were not attached to a connector 28 (e.g. an open-cell configuration), such an unattached peak can prevent re-sheathing.



Independent claim 35 similarly recites, “each permanent connector strut connecting a valley of the first serpentine band to a peak of the second serpentine band, the plurality of disengagable connector struts connecting the remaining valleys of the first serpentine band to the remaining peaks of the second serpentine band.”

Bashiri does not disclose or suggest the claimed serpentine band and connector configuration. The stent pattern illustrated in the reference includes many peaks/valleys/turns that do not include a connecting member. See e.g. marked Figure 8, provided below.



An obviousness rejection requires a suggestion of all limitations in a claim. See *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003).

Further, Bashiri is directed to a Hybrid Balloon Expandable/Self Expanding Stent. See title. The stent includes frangible members 114 that are broken by mechanical force (e.g. expansion balloon). The frangible members 114 restrain the stent from self-expansion. After the frangible members are broken, the stent self-expands. See e.g. paragraphs 0007 and 0034.

A rejection of claims 1 or 35 would require a maximum number of frangible connectors to be used between adjacent serpentine band; however, a person of ordinary skill in the art would not have been motivated to use a maximum number of frangible connectors. Since the frangible connectors limit expansion and must be broken to achieve expansion, a person of ordinary skill in the art would have been motivated to use a minimum number of frangible connectors in the Bashiri stent.

Thus, a person of ordinary skill in the art would not have considered a stent according to claims 1 or 35 obvious over Bashiri in view of Acosta. Applicants request withdrawal of the rejections asserted against claims 1 and 35, and all claims dependent therefrom.

Independent Claim 2

Independent claim 2 recites, “at least a portion of said at least one disengagable connector strut is made from a material having a higher corrosion potential than a material used to form said serpentine bands.”

The Office Action asserts that a higher corrosion potential is inherent in the Acosta connector. See Office Action at page 4. This assertion is traversed.

“In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.” *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990).

The Office Action has not established that a higher corrosion potential is *necessarily present* in the Acosta device. The Office Action asserts that the Acosta connectors have a higher corrosion potential because “otherwise the entire device would corrode simultaneously destroying the device.” See Office Action at page 4. This assertion is traversed. It is entirely possible that the Acosta connectors have the same corrosion potential as the remainder of the Acosta stent elements. Applicants request withdrawal of the rejection of independent claim 2.

Conclusion

Based on at least the foregoing amendments and remarks, Applicants respectfully submit this application is in condition for allowance. Favorable consideration and prompt allowance of claims 1, 2, 4-14, 35-38 and 55-57 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

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By: /Jeremy G Laabs/
Jeremy G. Laabs
Registration No.: 53170

6640 Shady Oak Rd., Suite 400
Eden Prairie, MN 55344-7834
Telephone: (952) 563-3000
Facsimile: (952) 563-3001